

**Energy Efficiency and Renewable Resource Programs; Engrossed
Text (s. 196.374, Stats.)**

196.374 Energy efficiency and renewable resource programs. (1)

DEFINITIONS. In this section:

(a) “Agricultural producer” means a person engaged in an agricultural activity, as defined in s. 101.10 (1) (a).

(am) “Biomass” means plant material or residue, biological waste, or landfill gases. “Biomass” does not include garbage, as defined in s. 289.01 (9), or nonbiological industrial, nonbiological commercial, or nonbiological household waste.

(b) “Commitment to community program” means an energy efficiency or load management program ~~by or on behalf for regulated fuel usage in the service territory~~ of a municipal utility or retail electric cooperative or a renewable resource program involving customer applications of renewable resources that take place at the premises of the customers or members of a municipal utility or retail electric cooperative.

(c) “Customer application of renewable resources” means the generation of energy from renewable resources that takes place on the premises of a customer or member of an energy utility ~~or, municipal utility, or a member of a retail electric cooperative.~~

(d) “Energy efficiency program” means a program for reducing the usage or increasing the efficiency of the usage of energy ~~by a customer or member of an energy~~

~~utility, municipal utility, or retail electric cooperative~~ a target fuel. “Energy efficiency program” does not include load management.

(dm) “Energy provider” means an energy utility, municipal utility, or retail electric cooperative.

(e) “Energy utility” means an investor-owned electric or natural gas public utility.

(em) “Large energy customer” means a customer of an energy utility that owns or operates a facility in the energy utility’s service area that has an energy demand of at least 1,000 kilowatts of electricity per month or of at least 10,000 decatherms of natural gas per month and that, in a month, is billed at least \$60,000 for electric service, natural gas service, or both, for all of the facilities of the customer within the energy utility’s service territory.

(er) “Large energy customer program” means a program under sub. (2) (c).

(f) “Load management program” means a program to allow an energy utility, ~~municipal utility, provider or wholesale electric cooperative, as defined in s. 16.957 (1) (v), retail electric cooperative, or municipal electric company, as defined in s. 66.0825 (3) (d),~~ supplier to control or manage daily or seasonal customer or member demand associated with equipment or devices used by customers or members.

(g) “Local unit of government” has the meaning given in s. 23.24 (4) (a) 1.

(h) “Municipal utility” has the meaning given in s. 16.957 (1) (q).

(hm) “Natural gas” does not include natural gas that is used to generate electricity.

(i) ~~“Ordered program” means an energy efficiency or renewable resource program that an energy utility commenced on or after January 1, 2001, under a commission order issued on or after January 1, 2001, and in effect before July 1, 2007.~~

(ig) “Prime supplier” means a person that imports an unregulated fuel into this state for sale to a wholesale or retail distributor, or to an end user, for use in this state.

(ir) “Regulated fuel” means electricity or natural gas.

(j) “Renewable resource” means a resource that derives energy from any source other than coal, petroleum products, nuclear power ~~or, except as used in a fuel cell,~~ natural gas, or nonbiological industrial, nonbiological commercial, or nonbiological household waste. “Renewable resource” includes resources deriving energy from any of the following:

1. Solar energy.
2. Wind power.
3. Water power.
4. Biomass.
5. Geothermal technology.
6. Tidal or wave action.
7. Fuel cell technology that uses, as determined by the commission, a renewable fuel.

8. Any other resource designated by the commission by rule.

(k) “Renewable resource program” means a program for encouraging the development or use of customer applications of renewable resources, including educating customers or members about renewable resources, encouraging customers or members to use renewable resources, and encouraging the transfer of new or emerging technologies from research, development, and demonstration to commercial implementation.

(L) “Retail electric cooperative” has the meaning given in s. 16.957 (1) (t).

(mb) "Statewide programs" means the statewide energy efficiency and renewable resource programs established under sub. (2) (a) 1.

(me) "Statewide programs contractor" means a person with whom energy utilities contract under sub. (2) (a) 1. to administer the statewide programs.

(mh) "Supplemental utility program" means a program under sub. (2) (b) 2.

(mL) "Target fuel" means a regulated or unregulated fuel.

(mo) "Total sales" means, with respect to a target fuel, the total amount of the target fuel sold at retail in this state as measured in energy units.

(mr) "Unregulated fuel" means liquified petroleum gas or heating oil.

(mu) "Utility-administered program" means a program under sub. (2) (b) 1.

(n) "Wholesale supplier" has the meaning given in s. 16.957 (1) (w).

(o) "Wholesale supply percentage" has the meaning given in s. 16.957 (1) (x).

(2) ENERGY EFFICIENCY AND RENEWABLE RESOURCE PROGRAMS. (a) *Statewide programs.* 1. The energy utilities in this state shall collectively establish and fund statewide energy efficiency and renewable resource programs. The energy utilities shall collectively contract, on the basis of competitive bids, with one or more persons to develop and administer the statewide energy efficiency and renewable resource programs. The utilities may not execute a A contract under this subdivision may not be executed unless the commission has approved the contract. The ~~commission shall~~ require each energy utility to spend the amount required under sub. (3) (b) 2. moneys received by a statewide programs contractor under sub. (3) (bw) 3. and 4. shall be used to fund the statewide energy efficiency and renewable resource programs.

2. The purpose of the statewide programs under this paragraph shall be to help achieve environmentally sound and adequate energy target fuel supplies at reasonable cost, consistent with the commission's responsibilities under s. 196.025

(1) (ar) and (e) and the energy utilities' obligations under this chapter. The statewide programs shall include, at a minimum, all of the following:

a. Components to address the energy target fuel needs of residential, commercial, agricultural, institutional, and industrial energy target fuel users and local units of government.

b. Components to reduce the energy target fuel costs incurred by local units of government and agricultural producers, by increasing the efficiency of energy target fuel use by local units of government and agricultural producers. The commission shall ensure that not less than 10 percent of the moneys ~~utilities are required to spend under subd. 1. or sub. (3) (b) 2. paid by energy utilities and prime suppliers under sub. (3) (bw) 3. and 4.~~ is spent annually on programs under this subdivision except that, if the commission determines that the full amount cannot be spent on cost-effective programs for local units of government and agricultural producers, the commission shall ensure that any surplus funds be spent on programs to serve commercial, institutional, and industrial customers target fuel users. A local unit of government that receives assistance under this subd. 2. b. shall apply all costs savings realized from the assistance to reducing the property tax levy.

c. Initiatives and market strategies that address the needs of individuals or businesses facing the most significant barriers to creation of or participation in markets for energy efficient products that the individual or business manufactures or sells or energy efficiency services that the individual or business provides.

d. Initiatives for research and development regarding the environmental and economic impacts of energy target fuel use in this state.

3. The commission may not require an energy utility to administer or fund any energy efficiency or renewable resource program that is in addition to the statewide

~~programs required under subd. 1. and any ordered program of the utility. This subdivision does not limit the authority of the commission to enforce an energy utility's obligations under s. 196.378 or 196.379.~~

(b) *Utility-administered and supplemental utility programs.* 1. An energy utility may, with commission approval, administer or fund one or more energy efficiency programs for regulated fuels that is limited to, ~~as determined by the commission, large commercial, industrial, institutional, or agricultural customers in its service territory.~~ An energy utility shall pay for a program under this subdivision ~~with~~ by withholding a portion of the amount it is required to pay to a statewide programs contractor under sub. (3) ~~(b) 2. (bw) 3.,~~ as approved by the commission. The commission may not order an energy utility to administer or fund a program under this subdivision.

2. An energy utility may, with commission approval, administer or fund an energy efficiency or renewable resource program for regulated fuels that is limited to customers in its service territory and that is in addition to the statewide programs required under par. (a) or utility-administered programs ~~authorized under subd. 1.~~ The commission may not order an energy utility to administer or fund a program under this subdivision.

3. An energy utility ~~that administers or funds a program under subd. 1. or 2. or an ordered program~~ may request at any time to establish, modify, or discontinue a utility-administered or supplemental utility program, and the commission may approve, ~~to modify, or discontinue,~~ in whole or in part, the ~~ordered program.~~ An energy utility may request the establishment, modification, or discontinuation of a program under subd. 1. or 2. at any time and shall request the modification or discontinuation of an ordered program as part of a proceeding under sub. (3) ~~(b) 1.~~

(c) *Large energy customer programs.* A customer of an energy utility may, with commission approval, administer and fund its own energy efficiency programs or renewable resource programs if the customer satisfies the definition of a large energy customer for any month in the 12 months preceding the date of the customer's request for approval. A customer may request commission approval at any time. A customer that funds a program under this paragraph may deduct the amount of the funding from the amount the energy utility may collect from the customer under sub. (5) (b). If the customer deducts the amount of the funding from the amount the energy utility may collect from the customer under sub. (5) (b), the energy utility shall credit the amount of the funding against the amount the energy utility is required to spend pay to a statewide programs contractor under sub. (3) (b) ~~2.~~ 3.

(3) COMMISSION DUTIES. (a) *In general.* The commission shall have oversight of statewide, utility-administered, supplemental utility, and large energy customer programs under sub. (2). The commission shall maximize coordination of program delivery, including coordination between such programs under subs. (2) (a) ~~1., (b) 1. and 2., and (c) and (7),~~ ordered programs, low-income weatherization programs under s. ss. 16.26, 16.27, and 16.957, renewable resource programs under s. 196.378, and other energy efficiency or renewable resource programs. The commission shall cooperate with the department of natural resources to ensure coordination of energy efficiency and renewable resource programs with air quality programs and to maximize and document the air quality improvement benefits that can be realized from energy efficiency and renewable resource programs. ~~(b) 1. At least every 4 years, after notice and opportunity to be heard, the commission shall, by order, evaluate the energy efficiency and renewable resource programs under sub. (2) (a)~~

~~1., (b) 1. and 2., and (c) and ordered programs and set or revise goals, priorities, and measurable targets for the programs. The In carrying out its duties under this paragraph, the commission shall give priority to cost-effective programs that moderate the growth in electric and natural gas target fuel demand and usage, facilitate markets and assist market providers to achieve higher levels of energy efficiency, promote energy reliability and adequacy, avoid adverse environmental impacts from the use of energy, and promote rural economic development.~~

~~(b) *Programs and funding.* 2. The commission shall require each energy utility to spend 1.2 percent of its annual operating revenues to fund the utility's programs under sub. (2) (b) 1., the utility's ordered programs, the utility's share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1., and the utility's share, as determined by the commission under sub. (3) (b) 4., of the costs incurred by the commission in administering this section. Subject to approval under subd. 3., the commission may require each energy utility to spend a larger percentage of its annual operating revenues to fund these programs and costs. The commission may make such a requirement based on the commission's consideration of all of the following:~~

~~a. Studies of potential energy-efficiency improvements that could be made in this state, including at least one study completed within the preceding 2 years that provides a prospective 5-year and 10-year estimate of such potential that is cost-effective.~~

~~b. The potential short-term and long-term impacts on electric and natural gas rates and alternative means to mitigate such impacts.~~

~~c. The impact on the continuation and effectiveness of existing energy efficiency and renewable resource programs, and the ability of such programs to capture time-limited and cost-effective energy efficiency opportunities.~~

~~d. The impact on the reliability and adequacy of systems for the generation and transmission of electricity and the transmission of natural gas.~~

~~e. Societal impacts.~~

~~f. The potential for displacing or delaying construction of electric generating plants and transmission lines.~~

~~g. Economic impacts that are likely to accrue from reducing state and private expenditures on coal, natural gas, fuel oil, and other fossil fuel imports.~~

~~h. Any other relevant factors.~~

~~3. The commission shall submit to the joint committee on finance any proposal to require each energy utility to spend a larger percentage of its annual operating revenues than the percentage specified in subd. 2. (intro.) to fund the programs specified in subd. 2. (intro.). If the cochairpersons of the committee do not notify the commission within 10 working days after the commission submits such a proposal that the committee has scheduled a meeting to review the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 10 working days after the commission submits a proposal, the cochairpersons of the committee notify the commission that the committee has scheduled a meeting to review the proposal, but, within 90 days of providing the notice, the committee does not object to the proposal, the commission may require each energy utility to spend the percentage specified in the proposal. If, within 90 days after providing the notice, the committee objects to the proposal, the~~

~~commission may not require each energy utility to spend the percentage specified in the proposal.~~

~~4. In each fiscal year, the commission shall collect from the persons with whom energy utilities contract under sub. (2) (a) 1. an amount equal to the costs incurred by the commission in administering this section.~~

(bc) Quadrennial proceedings; generally. Every 4 years, the commission shall, after notice and opportunity to be heard, conduct a proceeding for making assessments under par. (bg), establishing goals under par. (bn), establishing funding requirements under par. (br), and allocating the funding requirements under par. (bw).

(bg) Quadrennial potential studies. 1. The commission shall assess the reduction in the use of and demand for each target fuel that can be achieved in each year of the quadrennium following the proceeding under par. (bc) through all of the following:

a. Cost-effective energy efficiency and renewable resource programs administered by energy providers or other persons.

b. Programs and policy mechanisms under the commission's jurisdiction, excluding the programs described in subd. 1. a., and including demand response and load management programs, orders under s. 196.379 (3), and the renewable portfolio standard, as defined in s. 196.378 (1r) (gm).

c. Low-income weatherization programs under ss. 16.26, 16.27, and 16.957.

d. Other programs and policy mechanisms, including appliance and equipment efficiency standards, mandatory and voluntary energy conservation standards for buildings, and voluntary certification programs.

2. Reductions in use of and demand for a target fuel in assessments under subd. 1. shall be expressed as percentages of total sales for the target fuel.

(bn) Quadrennial goals. For each year of the quadrennium following the proceeding under par. (bc), the commission shall establish a goal for the reduction in demand for and use of each target fuel that can be achieved under the statewide programs, and a goal for the reduction in demand for and use of each regulated fuel that can be achieved by or on behalf of each municipal utility and retail electric cooperative, as follows:

1. For each regulated fuel:

a. Estimate the total sales of the regulated fuel that will occur in the year.

b. Estimate the proportion of the amount estimated under subd. 1. a. that will be attributable to sales by all energy utilities in the year and multiply the proportion estimated under this subd. 1. b. by the amount estimated under subd. 1. a.

c. Estimate the proportion of the amount estimated under subd. 1. a. that will be attributable to sales by each municipal utility or retail electric cooperative in the year and multiply the proportion estimated under this subd. 1. c. by the amount estimated under subd. 1. a.

d. Determine the difference between the percentages determined under par. (bg) 1. a. and c. for the regulated fuel for the year.

e. Multiply the product determined under subd. 1. b. by the difference determined under subd. 1. d. The resulting product shall be the goal under the statewide programs for the regulated fuel for the year, unless modified by the commission under sub. (8) (b) 2.

f. Multiply the product determined under subd. 1. c. for a municipal utility or retail electric cooperative by the difference determined under subd. 1. d. The

resulting product shall be the goal for the regulated fuel for the year for the municipal utility or retail electric cooperative, unless modified by the commission under sub. (8) (b) 2., and except that the commission may revise the goal if the commission determines that the goal is unreasonable considering the composition of the membership or customer base of the municipal utility or retail electric cooperative.

2. For each unregulated fuel:

a. Estimate the total sales of the unregulated fuel that will occur in the year.

b. Determine the difference between the percentages determined under par.

(bg) 1. a. and c. for the unregulated fuel for the year.

c. Multiply the estimate under subd. 2. a. by the difference determined under subd. 2. b. The resulting product shall be the goal under the statewide programs for the unregulated fuel for the year, unless modified by the commission under sub. (8)

(b) 2.

(br) *Quadrennial funding requirements.* 1. 'Statewide programs.' The commission shall determine the amount of funds necessary for statewide programs for each target fuel for each year of the quadrennium following the proceeding under par. (bc) as follows:

a. For each target fuel, determine the amount of funds necessary to achieve the goal determined under par. (bn) 1. e. or 2. c. for the year.

b. Subtract from the amount determined under subd. 1. a. the total amount that the commission allows all energy utilities to pay for utility-administered programs for the target fuel in the year.

c. Subtract from the amount determined under subd. 1. b. the total amount of funding the commission allows for all large energy customer programs for the target

fuel in the year. The result determined under this subd. 1. c. shall be the amount of funding necessary for statewide programs for the target fuel in the year.

2. 'Municipal utilities and retail electric cooperatives.' Except as provided in sub. (7) (bg), each municipal utility and retail electric cooperative shall determine the amount of funds necessary to achieve the goal determined under par. (bn) 1. f. for each regulated fuel for each year of the quadrennium following the proceeding under par. (bc).

(bw) *Funding allocation.* 1. A prime supplier shall report to the commission, in the form specified by the commission, the amount of unregulated fuel that the prime supplier imports into this state each year for ultimate use by end users in this state.

2. In the proceeding under par. (bc), for each target fuel, the commission shall determine the percentage of total sales of the target fuel by all energy utilities and prime suppliers in the quadrennium prior to the proceeding that is attributable to each energy utility and prime supplier.

3. For each regulated fuel, the commission shall order each energy utility to collect from its customers in each year of the quadrennium following the proceeding under par. (bc) an amount equal to the percentage determined for the energy utility under subd. 2. multiplied by the amount determined under par. (br) 1. c. for the regulated fuel for the year and pay the amount to a statewide programs contractor.

4. For each unregulated fuel, the commission shall order each prime supplier to pay to a statewide programs contractor in each year of the quadrennium following the proceeding under par. (bc) an amount equal to the percentage determined for the prime supplier under subd. 2. multiplied by the amount determined under par. (br) 1. c. for the unregulated fuel for the year.

(c) *Reviews* Other reviews and approvals. The commission shall do all of the following:

1. Review and approve contracts under sub. (2) (a) 1. ~~between the energy utilities and program administrators~~ If the energy utilities contract with more than one person under sub. (2) (a) 1., the commission shall determine how to allocate among those persons the requirements under this section involving statewide programs contractors.

2. Review requests under sub. (2) (b) ~~for utility-administered, supplemental utility, and large energy customer programs.~~ The commission may condition its approval of a request under sub. (2) (b) as necessary to protect the public interest. The commission shall approve a request under sub. (2) (b) 1. or 2. if the commission determines that a proposed energy efficiency or renewable resource program is in the public interest and satisfies all of the following: a. The program, has specific savings targets and performance measurable performance-based goals approved by the commission. b. The program, is subject to independent evaluation by the commission., and, for a utility-administered or supplemental utility program, satisfies all of the following:

am. The individual elements of the program do not duplicate elements of the statewide programs. This subd. 2. am. applies only to a utility-administered program.

bm. Implementation of the program will complement the statewide programs and enhance the ability of the statewide programs to meet or exceed their goals.

c. Implementation of the program will enhance the ability of the state to meet its greenhouse gas emission reduction goals under s. 299.03 (2).

d. Considering alternatives to the program, the costs of the program are reasonable.

e. The benefits of the program exceed the costs of the program.

(d) *Audits.* Annually, the commission shall contract with one or more independent auditors to prepare a financial and performance audit of the statewide, utility-administered, supplemental utility, and large energy customer programs specified in par. (b) 1. The purpose of the performance audit shall be to evaluate the programs and measure the performance of the programs against the goals and targets set approved by the commission under par. (b) 1. ~~The person or persons with whom the energy utilities contract for program administration under sub. (2) (a) 1.~~ shall pay the costs of the audits from the amounts paid under the contracts under sub. (2) (a) 1 (c) 2. or established under par. (bn) 1. e. or 2. c. The audit shall also determine the amount of reduction in the demand for and use of each target fuel that has resulted in the year under the programs.

(dm) Consultations. If an audit under par. (d) indicates that a program has failed to achieve one or more goals for the year of the audit, the commission shall consult with the statewide programs contractor or person administering the program regarding ways to modify the program to ensure that, as determined under sub. (8) (a), it will achieve its goals.

(e) *Reports.* Annually, the commission shall prepare and post on the commission's Internet site a report and submit a summary of not more than 2 pages to the legislature under s. 13.172 (2). The reports shall describe each of the following:

1. The expenses of the commission, energy utilities, and program administrators contracted under sub. (2) (a) 1. statewide programs contractors in administering or participating in the statewide programs under sub. (2) (a) 1.

2. The effectiveness of the statewide, utility-administered, supplemental utility, large energy customer, and commitment to community programs specified in ~~par. (b) 1. and sub. (7)~~ in reducing demand for electricity target fuels, and increasing the use of renewable resources owned by customers or members.

3. The results of audits under par. (d).

4. Any other information required by the commission.

(f) *Rules.* The commission shall promulgate rules to establish all of the following:

1. Procedures for energy utilities to collectively contract with program administrators for ~~administration of statewide programs under sub. (2) (a) 1. and to receive contributions from municipal utilities and retail electric cooperatives under sub. (7) (b) 2.~~ statewide programs contractors.

2. Procedures and criteria for commission review and approval of contracts for ~~administration of statewide programs under sub. (2) (a) 1., including criteria for the selection of program administrators under sub. (2) (a) 1.~~ statewide programs contractors.

3. Procedures and criteria for commission review and approval of utility-administered, supplemental utility, and large energy customer programs under ~~sub. (2) (b) 1. and 2., customer programs under sub. (2) (c), and requests under sub. (2) (b) 3.~~

4. Minimum requirements for ~~energy efficiency and renewable resource~~ the statewide, utility-administered, supplemental utility, and large energy customer programs under ~~sub. (2) (a) 1. and customer energy efficiency programs under sub. (2) (c).~~

(4) DISCRIMINATION PROHIBITED; COMPETITION. (a) In implementing the statewide programs under sub. (2) (a) 1. or administering a commitment to community program under a contract under sub. (7) (am) 2., including the awarding of grants or contracts, ~~a person who contracts with the utilities under sub. (2) (a) 1., a statewide programs contractor or a person who subcontracts with such a person a statewide programs contractor:~~

1. May not discriminate against an energy utility provider or its affiliate or a wholesale supplier or its affiliate solely on the basis of its status as an energy utility provider or its affiliate or wholesale supplier or its affiliate.

2. Shall provide services to utility customers target fuel users on a nondiscriminatory basis and subject to a customer's user's choice.

(4) (b) An energy utility that provides financing under ~~an energy efficiency program under sub. (2) (b) 1. or 2.~~ a utility-administered or supplemental utility program for installation, by a customer, of energy efficiency or renewable resource processes, equipment, or appliances, or an affiliate of such a utility, may not sell to or install for the customer those processes, equipment, appliances, or related materials. The customer shall acquire the installation of the processes, equipment, appliances, or related materials from an independent contractor of the customer's choice.

(5) COST RECOVERY. (a) *Rate-making orders.* The commission shall ensure in rate-making orders that an energy utility recovers from its ratepayers the amounts the energy utility ~~spends for~~ pays for statewide, utility-administered, and supplemental utility programs under sub. (2) (a) 1.

(b) *Large energy customers.* 1. Except as provided in sub. (2) (c) and par. (bm) 2., if the commission has determined that a customer of an energy utility is a large

energy customer under 2005 Wisconsin Act 141, section 102 (8) (b), then, each month, the energy utility shall collect from the customer, for recovery of amounts under par. (a), the amount determined by the commission under 2005 Wisconsin Act 141, section 102 (8) (c).

2. A customer of an energy utility that the commission has not determined is a large energy customer under 2005 Wisconsin Act 141, section 102 (8) (b), may petition the commission for a determination that the customer is a large energy customer. The commission shall determine that a petitioner is a large energy customer if the petitioner satisfies the definition of large energy customer for any month in the 12 months preceding the date of the petition. If the commission makes such a determination, the commission shall also determine the amount that the energy utility may collect from the customer each month for recovery of the amounts under par. (a). The commission shall determine an amount that ensures that the amount collected from the customer is similar to the amounts collected from other customers that have a similar level of energy costs as the customer. Except as provided in sub. (2) (c) and par. (bm) 2., each month, the energy utility shall collect from the customer, for recovery of amounts under par. (a), the amount determined by the commission under this subdivision.

(bm) *Allocation proposal.* 1. The commission shall commence a proceeding for [for] creating a proposal for allocating within different classes of customers an equitable distribution of the recovery of the amounts under par. (a) by all energy utilities. The purpose of the allocation is to ensure that customers of an energy utility within a particular class are treated equitably with respect to customers of other energy utilities within the same class. No later than December 31, 2008, the commission shall submit the proposal to the governor and chief clerk of each house

of the legislature for distribution to the appropriate standing committees of the legislature under s. 13.172 (3).

2. If, by July 1, 2009, legislation based on the proposal under subd. 1. has not been enacted, the commission shall, beginning on July 1, 2009, annually increase the amount that an energy utility may recover from a large energy customer each month under par. (b) only by a percentage that is the lesser of the following:

a. The percentage increase in the energy utility's operating revenues during the preceding year.

b. The percentage increase in the consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, during the preceding year.

~~3. Until the proposal under subd. 1. takes effect, the commission may not include the revenues received from a large energy customer in the calculation of operating revenues for purposes of sub. (3) (b) 2. for an energy utility that in 2005 did not collect revenues from its customers under s. 196.374 (3), 2003 stats.~~

(c) *Accounting.* The commission may prescribe the accounting treatment of energy utility expenditures required under this section, including the use of any escrow accounting.

(d) *Equitable contributions.* Subject to pars. (b) and (bm) 2., the commission shall ensure that the cost of energy efficiency and renewable resource the statewide and utility-administered programs is equitably divided among customer classes so that similarly situated ratepayers contribute equivalent amounts for the programs.

(5m) BENEFIT AND GRANT OPPORTUNITIES. (a) ~~The~~ Except as provided in par. (am), the commission shall ensure that, on an annual basis, each customer class of an energy utility has the opportunity to receive grants and benefits under energy

~~efficiency~~ the statewide and utility-administered programs in an amount equal to the amount that is recovered from the customer class under sub. (5) (a). Biennially, the commission shall submit a report to the governor, and the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2), that summarizes the total amount recovered from each customer class and the total amount of grants made to, and benefits received by, each customer class.

(am) The commission may allow a customer class of an energy utility the opportunity to receive grants and benefits under the statewide and utility-administered programs in an amount that is not equal to the amount recovered from the customer class under sub. (5) (a), but only if the commission finds that the allowance is in the public interest and promotes the cost-effective achievement of a goal established under sub. (3) (bn) 1. e. or 2. c.

(b) The commission shall ensure that customers target fuel users throughout the state have an equivalent opportunity to receive the benefits of the statewide and utility-administered programs under sub. (2) (a) 1. and (b) 1. The commission shall ensure that the statewide programs are designed to ensure that retail customers target fuel users in areas not served by utility-administered programs under sub. (2) (b) 1. receive equivalent opportunities as those in areas served by utility-administered programs under sub. (2) (b) 1.

(6) ANNUAL STATEMENTS. Annually, the commission shall prepare a statement that describes the statewide, utility-administered, supplemental utility, and large energy customer programs under sub. (2) (a) 1., (b) 1. and 2., and (c), and ~~ordered programs, administered or funded by the energy utility~~ and presents cost and benefit information for those programs. An energy utility shall provide each of its customers with a copy of the statement.

(7) MUNICIPAL UTILITIES AND RETAIL ELECTRIC COOPERATIVES. ~~(a) Requirement to charge fees. 1. Each retail electric cooperative and municipal utility shall charge a monthly fee to each customer or member in an amount that is sufficient for the retail electric cooperative or municipal utility to collect an annual average of \$8 per meter. A retail electric cooperative or municipal utility may determine the amount that a particular class of customers or members is required to pay under this subdivision and may charge different fees to different classes of customers or members.~~

~~2. Notwithstanding subd. 1., in any month, the monthly fee under subd. 1. may not exceed 1.5 percent of the total of every other charge for which the member or customer is billed for that month or \$375 per month, whichever is less.~~

(am) Quadrennial funding of goals. Except as provided in par. (bg), in each year of the quadrennium following the proceeding under sub. (3) (bc), each municipal utility and retail electric cooperative shall spend the amount determined by the municipal utility or retail electric cooperative under sub. (3) (br) 2. for that year on the following:

1. Commitment to community programs administered individually by the municipal utility or retail electric cooperative or jointly by the municipal utility or retail cooperative and other municipal utilities or retail electric cooperatives.

2. Contracts with a statewide programs contractor to administer commitment to community programs in the service territory of the municipal utility or retail electric cooperative.

3. Contracts with a wholesale supplier to administer commitment to community programs in the service territory of the municipal utility or retail electric cooperative.

4. Any combination of commitment to community programs or contracts under subds. 1. to 3.

(bg) Wholesale supplier assignments. A municipal utility or retail electric cooperative may assign to a wholesale supplier the duty to achieve a goal determined for the municipal utility or retail electric cooperative under sub. (3) (bn) 1. f. for a regulated fuel. If a wholesale supplier accepts an assignment, the wholesale supplier shall notify the commission. A wholesale supplier that accepts an assignment shall do all of the following:

1. Determine the amount of funds necessary to achieve the assigned goal.

2. Spend the amount determined under subd. 1. in administering commitment to community programs on behalf of the municipal utility or retail electric cooperative.

3. Prepare and provide statements on behalf of the municipal utility or retail electric cooperative under par. (dm).

4. Provide for audits and submit reports on behalf of the municipal utility or retail electric cooperative under par. (e).

5. If the wholesale supplier accepts an assignment from more than one municipal utility or retail electric cooperative, carry out the duties specified in subds. 1. to 4. on an aggregate basis for all the municipal utilities and retail electric cooperatives for which the wholesale supplier has accepted an assignment.

(b) (br) Commitment to community programs. 1. Except as provided in subd. 2., each retail electric cooperative and municipal utility shall spend the fees that it charges under par. (a) on commitment to community programs. The purpose of the commitment to community programs under this paragraph shall be to help achieve environmentally sound and adequate energy supplies at reasonable cost.

~~2. No later than October 1, 2007, and no later than every 3rd year after that date, each municipal utility or retail electric cooperative shall notify the commission whether it has elected to contribute the fees that it charges under par. (a) to statewide programs established under sub. (2) (a) 1. in each year of the 3-year period for which it has made the election. If a municipal utility or retail electric cooperative elects to contribute to the statewide programs established under sub. (2) (a) 1., the utility or cooperative shall contribute the fees that it collects under par. (a) to the payment of contracts under sub. (2) (a) 1. for administration of the statewide programs, as specified in the rules under sub. (3) (f) 1., in each year of the 3-year period for which the utility or cooperative has made the election.~~

~~(c) *Wholesale supplier credit.* If a wholesale supplier has established an energy efficiency or load management program, a municipal utility or retail electric cooperative that is a customer or member of the wholesale supplier may include an amount equal to the product of the municipal utility's or retail electric cooperative's wholesale supply percentage and the amount that the wholesale supplier has spent on energy efficiency or load management programs in a year in calculating the amount that the municipal utility or retail electric cooperative has spent on commitment to community programs under par. (b).~~

~~(cm) *Cost recovery.* The commission shall ensure in rate-making orders that a municipal utility recovers from its ratepayers the amounts the municipal utility spends to comply with this section.~~

~~(d) *Joint programs.* Municipal utilities or retail electric cooperatives may establish joint commitment to community programs, except that each municipal utility or retail electric cooperative that participates in a joint program shall comply with the spending requirements under par. (b).~~

(dm) Annual statements. Annually, a municipal utility or retail electric cooperative shall prepare a statement that describes the municipal utility's or retail electric cooperative's commitment to community programs and provide customers or members with a copy of the statement.

(e) Audits and reports. 1. Annually, each municipal utility and retail electric cooperative that ~~spends the fee that it charges under par. (a) for commitment to community programs under par. (b)~~ shall provide for an independent financial and program audit of its the commitment to community programs that it administers or for which it contracts under par. (am) and submit a report to the commission that describes all of the following:

a. An accounting of any fees charged to customers or members ~~under par. (a) in the year in order to comply with the spending required under par. (am)~~ and an accounting of the expenditures in the year on commitment to community programs under par. (b), ~~including any amounts included in the municipal utility's or retail electric cooperative's calculations under par. (c) that the municipal utility or retail electric cooperative administers or for which it contracts under par. (am).~~

b. A description of the commitment to community programs established by the municipal utility or retail electric cooperative in the year described in subd. 1. a.

c. The effectiveness of the commitment to community programs described in subd. 1. a. in reducing demand for electricity ~~by customers or members~~ regulated fuels.

d. The results of audits under this subdivision.

e. An assessment, based on the program audit, of whether the commitment to community programs described in subd. 1. a. have met the goal for each regulated fuel for the year determined under sub. (3) (bn) 1. f.

2. The commission shall require that municipal utilities and retail electric cooperatives file reports under subd. 1. electronically, in a format that allows for tabulation, comparison, and other analysis of the reports.

3. The commission shall maintain reports filed under subd. 1. for at least 6 years.

(8) COMPLIANCE. (a) *Determinations.* 1. a. For each quadrennium following the proceeding under sub. (3) (bc), the commission shall determine the annual average reduction in demand for and use of each target fuel that is achieved under the statewide programs and achieved by or on behalf of each municipal utility and retail electric cooperative through commitment to community programs. Except as provided in subds. 1. b. and 1. c., if the annual average reduction for a target fuel equals or exceeds the average of the goals determined under sub. (3) (bn) 1. e., 1. f., or 2. c. for the quadrennium, the commission shall conclude that the goal is achieved for the quadrennium.

b. If a municipal utility or retail electric cooperative enters into a contract under sub. (7) (am) 3. with a wholesale supplier and at least one other municipal utility or retail electric cooperative enters into a similar contract with the wholesale supplier, the commission shall determine whether to conclude that a goal is achieved for a regulated fuel for a year under subd. 1. a. based on the aggregate annual average reduction that results for that regulated fuel for that year under all of the contracts.

c. If a wholesale supplier accepts assignment of a goal under sub. (7) (bg) for a regulated fuel for a year from more than one municipal utility or retail electric cooperative, the commission shall determine whether to conclude that the goal is achieved on an aggregate basis for all the municipal utilities and retail electric

cooperatives for which the wholesale supplier has accepted the assignment, rather than on an individual basis for each municipal utility or retail electric cooperative.

2. For each utility-administered, supplemental utility, and large energy customer program, the commission shall determine whether the program achieved the goals approved for the program under sub. (3) (c) 2. on average over the time period in which the program is in effect or another time period specified by the commission.

(b) Reviews. 1. If the commission determines under par. (a) that a goal is not achieved, the commission shall investigate, as applicable, the statewide programs or the utility-administered, large energy customer, or commitment to community programs at issue, and determine the reasons for failure to achieve the goal.

2. If the commission determines under subd. 1. that a statewide programs contractor or person administering the utility-administered, large energy customer, or commitment to community program made a good faith effort to meet the goal and that the failure is due to factors outside the statewide program contractor's or person's control, the commission shall take those factors into account in modifying goals for and, where applicable, approving future programs administered by the statewide programs contractor or person.

3. If the commission determines under subd. 1. that a statewide programs contractor or person administering the utility-administered, large energy customer, or commitment to community program did not make a good faith effort to achieve the goal or that the failure to achieve the goal was due to factors within the statewide program contractor's or person's control, the commission shall implement remedies according to the rules promulgated under par. (c). The commission may determine that a statewide programs contractor or person administering the

utility-administered, large energy customer, or commitment to community program did not make a good faith effort to meet a goal only if the commission finds any of the following:

a. The statewide programs contractor or person has repeatedly or grossly failed to meet a goal.

b. For a commitment to community program, the municipal utility, retail electric cooperative, or wholesale supplier administering or contracting for the program did not determine an amount of funds under sub. (3) (br) 2. or (7) (bg) 1. that could reasonably be considered necessary to achieve the goal.

c. Any other condition specified by the commission by rule.

(c) Remedies. The commission shall promulgate rules specifying remedies to implement under par. (b) 3. that are in proportion to the magnitude of the failure to achieve a goal and the degree to which a statewide programs contractor or person administering the utility-administered, large energy customer, or commitment to community program did not make a good faith effort or did not control the factors that resulted in the failure to achieve the goal. The rules shall include all of the following remedies:

1. An order that a statewide programs contractor or person take corrective actions, which may include achieving the goal in a year or other time period specified by the commission, in addition to achieving any other goal under this section that applies to that year or time period.

2. For a goal under the statewide programs:

a. An order that the energy utilities invoke any provisions of a contract under sub. (2) (a) 1., or that a statewide programs contractor invoke any provisions of a subcontract, that impose monetary penalties for failure to achieve a goal.

b. An order that the energy utilities modify or terminate the contract with a statewide programs contractor under sub. (2) (a) 1. or an order that a statewide programs contractor modify or terminate any subcontract.

3. For a goal under a utility-administered or large energy customer program, an order modifying or terminating the program.

4. For a goal of a municipal utility or retail electric cooperative, an order requiring the municipal utility or retail electric cooperative to modify or terminate a contract with or assignment to a wholesale supplier under sub. (7) (am) 3. or (bg), or enter into a contract with a statewide programs contractor under sub. (7) (am) 2., or an order requiring both.

5. Any other remedy specified by the commission.

(8) (d) *Exceptions.* An energy utility that spends pays to a statewide programs contractor the full amount required under sub. (3) (b) 2. (bw) 3. in any year is considered to have satisfied its requirements under this section for that year. A municipal utility or retail electric cooperative that contracts with a statewide programs contractor under sub. (7) (am) 2. to achieve each of the utility's or cooperative's goals determined under sub. (3) (bn) 1 f. for a year is considered to have satisfied its requirements under this section for that year.

(9) TREATMENT OF CERTAIN CAPITAL INVESTMENTS. (a) The commission may allow an energy utility to earn a return on capital invested under a utility-administered or supplemental utility program for energy conservation or efficiency equipment that is located on customer premises, including equipment owned by either the energy utility or a customer. The commission may make such an allowance only if the commission determines that the investment is prudent and a cost-effective means of advancing energy conservation or efficiency.

(b) If the commission makes an allowance under par. (a), all of the following apply:

1. If the investment is made to replace existing equipment, the commission shall allow the energy utility to earn a return only on that portion of the investment that can be attributed to improving energy conservation or efficiency in comparison to the existing equipment.

2. If the investment is made to install new equipment that does not replace existing equipment, the commission shall allow the energy utility to earn a return only on that portion of the investment that can be attributed to improving energy conservation or efficiency in comparison to generally available alternative equipment.

(c) The commission shall promulgate rules to implement this subsection, including rules specifying the energy conservation or efficiency equipment that qualifies for treatment under par. (a).